1949. **File No.** OESTP/49

Legal Deptt. 10-49

G **BRANCH**

Subject:— Opinions under the Essential Supplies (Temporary Powers) Act 1946

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File No. OESTP/49

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C O N T E N T S.

Legal Department File No.O/S.C.T.A./49.

Sr.No.	P.I./O.No.	Subject.	Pages.
		Opinions under the Essential Supplies (Temporary Powers) Act, 1946.	
1.	G/77/24.1.49	Section 16 Whether goods despatched by railway through this province can be said to be exported from this Province while they are in transit.	1-2 (copies not made)
2.	G/152/16.2.1949	Section 4(b) Whether it is necessary to modify section 4(b) in applying the Act to the merged Deccan States as suggested by the Central Govt. so that Govt. may delegate power to District Magistrates in respect of the area, under their extra Provincial Jurisdiction.	3-4 (copies not made)
3.	G/198/7.3.1949	Section 9. Cotton Cloth (Control on Movement) Order, 48, Cl. 3. Transport of Yarn from Bombay to Ujjain by employees of M/s. Malva Hosiery Factory Ltd. for the said Co. Whether in view of Section 9 directors of the said company who were not privy to the said offence can also be prosecuted under clause 3 of the Cotton Cloth and Yarn Control Order, 1948 along with the employees who have actually committed an offence.	5-6
4.	G/230/23.3.49	Section 4. Whether the District Magistrate, Broach who is also the District Magistrate, Rajpipla State can in his latter capacity exercise the powers delegated under section 4 to District Magistrates under the Govt. of India, Department of Works, Mines and Power Notification No. P.119 dated 3.3.1947 in relation to Kerosene oil	7-8

Sr.No.	R.I/O.No.	Subject.	Pages.
5.	~~Invcrx~~ 210/12.3.49	Government order C.P.D.No. 390/FAC/VI dated 22.6.1948 Whether a slight seeing trip or excursion is a party, entertainment or function organised by (a) individuals or (b) educational institutions etc.	9-12
6.	6200/3.6.49	Export of Bang Pal and flour from Nasik Road to Katni Railway Station	13-16 (copies not made)
7.	G/418/1.6.49	Section 9. Whether in view of the alleged benafied and honest mistake of the clerks and manager of the Bombay Trading Co. and the International Carriers Ltd. respectively, in booking cloth parcels by air from Bombay to Kanpur, prosecution should be launched against them or not and if so, whether the Managing Director and other Directors of the International Carriers should be prosecuted.	17-22
8.	G/484/29.6.49	Whether the Managing Agents, directors and office bearers of the Barsi Spinning and Weaving Ltd. should be prosecuted for breach of 3 of the Cotton Textiles (Control of Movement) Order 1943 for transporting to Barsi from Bombay without a permit 4 bales of yarn purchased from the Apollo Mills Bombay.	23-24 (copies not made)
9.	G/378/17.5.49	Whether G.O.C.S.P.No. 383/I, dated 7.7.48 prohibits also import of rationed articles from Greater Bombay into the 47 villages in the appendix to the said order and vice versa.	25-26 (copies not made)

Sr.No.	R.I./C.No.	Subject.	Pages.
10.	C/535/20.7.1949	Application of order relating to Textile Control to Baroda State	27-28 (copies not made)
11.	C/548/6.8.49	Section 3. Delegation of powers to District Magistrates under -- in respect of Kerosene Oil - Whether fresh delegation is necessary in respect of the newly added states areas.	29-30
12.	C/652/18.11.49	Whether in view of the insertion of the new section 7A in the Essential Supplies (Temporary Powers) Act a new clause providing for forfeiture of property which forms subject of offence and of the receptacles containing such property and of the conveyances used in transporting it should be introduced in all the C.S.D. orders issued under this Act.	31-34

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Office of the R.L.A.

The view expressed by the Police Prosecutor Mr. Thakore that section 9 of the Essential Supplies (Temporary Powers) Act, 1946 applies to body corporate registered under the Indian Companies Act and not to other Limited Companies registered at places outside India, is not correct. Section 9 of the Essential Supplies (Temporary Powers) Act, 1946 provides that if the person contravening the order made under the said Act is a company or other Body corporate, every director, manager, secretary or other officer or agent thereof shall unless he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention, be deemed to be guilty of such contravention. The Malva Hosiery Factory Ltd. of Ujjain is a body corporate having been registered as Company under the Gwalior Companies Act and as the enquiries reveal that Mr. - Jayanarayan Sharma an employee of the said factory was transporting the goods under orders of the said factory, the offence is committed by the body corporate. Prosecution should however be launched only against the Directors and office- bearers of the Company who are directly connected with its management. (1) Mr. Ramgopal Hardeodas Saboo, (2) Mr. Chiranjilal Brijlal Saboo, the Chairman of the Board of Directors and Managing Director respectively of the said Company and also the active partners of M/s. Brijlal Jamnadhar (Managing Agents of the said Company) and (3) Mr. Deviprasad Shrinivas Saboo, Assistant Manager of the Company who as it appears from the Deputy Commissioner of Police's letter are in charge of the running of

the factory should be prosecuted along with the three accused specified in the Deputy Commissioner of Police's letter, viz. (1) Mr. Dilbagsing, (2) Mr. Liladhar and Mr. Jainarayan Sharma, Other Directors and office- bearers of the Company who do not take part in the day to day administration need not be prosecuted.

Sd/- P.N.Lad,
Remembrancer of Legal Affairs.

U.R. to the P.T.C. No. G-198 dated 7.3.1949.

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Office of the R.L.A.

The question for consideration is whether the District Magistrate, Broach who is also the District Magistrate of the Rajpipla State can, in his latter capacity, exercise the powers delegated under section 4 of the Essential Supplies (Temporary Powers) Act, 1946 to District Magistrates under the Government of India, Department of Works, Mines and Power Notification No.P-110,dated 3.3.1947 in relation to Keresone Oil.

The said notification provides that the power to make orders under section 3 of the Essential Supplies (Temporary Powers)Act, 1946, shall in relation to kerosene oil be exercisable also by the District Magistrates in all Provinces in their respective districts. As the Rajpipla State does not form part of the Province, the District Magistrate,Broach has no power under the said notification to make any orde under section 3 of the Essential Supplies (Temporary Powers) Act fixing the selling prices of kerosene in the s id State area. By Government Order, Civil Supplies Department No.1020/II/ dated the 14.6.1948, the Essential Supplies (Temporary Powers)Act, 1946 ha been extended to the Rajpipla State and the Provincia Government can make an order under section 4 thereof delegating the powers under section 3 of the said act to the District Magistrate or Chief Administrator of Rajpipla State. (vide Section 4 of the Extra Provincial Jurisdiction Act and notification No. 224-P, dated 28.5.1948.)

Sd/- P.N.Lad,

Remembrancer of Legal Affairs.

U.O.N. to C.S.D.No.G/230 dated 23.3.49.

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Office of the R.L.A.

The Civil Supplies Department has raised the following two questions for R.L.A's consideration with reference to Government Order, Civil Supply Department No.390/FAC/VI dated 22.6.1948.

1) Whether a sight seeing trip or excursion is a party, entertainment or function organised by (a) individuals or (b) educational institutions; and

2) if so, whether there is a contravention of Government Order, Civil Supplies Department No.390/FAC/VI, dated 22.6.1948 if

a) each person takes his own cooked food and all eat together or (b) persons normally living together take their ration and cook a common meal and share it.

Q.No.1 The word 'party' is defined as 'a gathering for social pleasure or amusement (such as a dinner, tea party, a garden or picnic party)'. (Page 515 of Murray's Dictionary, Volume VII).'Entertainment means 'the act of furnishing accommodation, refreshment, good cheer or diversion, mental enjoyment, instruction or amusement afforded by anything seen or heard, hospitable reception etc. (page 394 Iyer's Law Lexicon). 'Function' means 'a public or social ceremony or gathering. A festivity or entertainment especially one somewhat formal (Webster's Dictionary). A sight seeing trip or an excursion is not a function but it is certainly a 'party'. It may also come under 'entertainment' as it provides diversion and mental enjoyment to the participants when organised by individuals and provides instruction also when organised by educational institutions.

Q.No.2 (a) If each of the 25 or more persons takes his own cooked food and each one eats only the food taken by him then there is no contravention of Government Order, Civil Supplies Department No.390/FAC/VI, dated 22.6.1948, In R.L.A's opinion No.

No.2223 dated the 20th March 1945 it was held as follows:- "It is nowhere suggested that those who attend the function with their own food should share it with others present on the occasion. If persons instead of eating their own food at their residence take it to the maidan and eat it there, ex facie there would be nothing wrong, since they neither serve nor distribut nor provide for consumpti n any eatables to persons within the meaning of the Order. The consumption of food as envisaged in the circular will not therefore come within the purview of the Finance Department (Supply) Or er No.390-II-A, dated the 28th October 1943." The Order dated 28.10.43 referred to in that opinion has since been superseded and the order now in force which is considerably amplified does not only prohibit 'serving, distributing or providing for consumption' any eatables etc. to 25 or more persons but also "preparing or causing to be prepared by each individual constituting the party but it is not for consumption by 25 or more persons. As the food is not shared with others, the persons instead of eating their food at their residence, eat it at the picnic spot. They only change the venue of their normal dining place and this does not constitute any breach of the Order. However, if each person takes with him his food and the party of 25 or more persons share it with each other, then there will be a contravention of the Order.

(b) If persons normally living together take their ration with them (which they can't take outside the Greater Bombay limits in view of the movement ban) and cook a common meal and share it, then there is a contravention of Government Order, Civil Supplies Department No.390/FAC/VI dated 22.6.1948, as the distribution, service and providing for consumption is in connection with a party.

Sd/- P.N.Lad,
Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No.210 dated 12.3.1949.

RVG/21.7

Legal Department.

The facts of this case are briefly as follows:-

"Four parcels containing imported cloth were sent on behalf of the Bombay Trading Co. to their transport agents the International Carriers, Limited for being despatched by air to Kanpur. The parcels as such by the Bombay Trading Co. did not give the discription of the contents on the outcoverings. A consignment note was prepared in the office of the International Carriers Limited, and the contents were described as "art silk". The parcels were opened at the Santa Cruz Aerodrome b the Customs Authorities and were found to have contained imported cloth. The Cotton Textiles (Control of Movement) Order, 1948 issued under the Essential Supplies (Temporary Powers) Act, 1948 provides that no person shall transport or allow to be transported by rail, road, air or inland navigation any cloth, yarn, or apparel except under a permit granted by the Textile Commissioner. No permit was obtained for the transport of the four parcels. As offence under section 7 of the Essential Supplies (Temporary Powers) Act, 1946 read with the Cotton Textiles (Control of Movement) Order, 1948 has been committed. One Khiaram Tirathdas of the Bombay Trading Company who delivered the parcels for despatch to the International Carriers, Limited is being prosecuted so also one Bramhpal and one Bhaskar who are responsible for making a wrong entry in the consignment not i.e. describing the contents as 'art silk' instead of imported cotton cloth, are proposed to be prosecuted. Para 6 of the Cotton Textiles (Control of Movement) Order provides that a carrier may require any person offering any package for transport to make a statement in writing declaring its contents and may refuse to accept for transport any package unless such declaration of its contents is made. In this case the parcels did not show on its out-coverings or were not accompanied by any memo showing what they contained. Both Bhaskar as well as Bramhapal of the

the International Carriers, Limited's were not justified in stating in the consignment note that they contained 'artsilk' - Tirathram who handed the parcels fordespatch did so, without obtaining the necessary permit. The prosecution of these three persons is, therefore, justified, although it is open to them to prove their innocence.

2. The questin for consideration is whether the proprietor of the Bombay Trading Company i.e. one Lachmandas and those of the International Carriers, Limited can be prosecuted in view of the presumption which can be drawn against directors, managers, secretaries and other officers of companies or other corporate bodies under Section 9 of the Essential Supplies (Temporary Powers) Act, 1946. That provisions provides that if the person contravening an order made under section 3 of the Act is a company or the other officer of the Company shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

3. The question regarding the prosecution of a Director of a Limited Company was recently considered by the R.L.A. in his opinion in U.R. to C.S.D. No.4722 dated 17th May 1948. In that opinion he has considered the decision of the Privy Council in Srinwas Mall's case in 49 Bom. L.R. 688 and the decision of the High Court in Macmull's case in 50 Bom. L.R. 190. As pointed out in the said decisions, the Courts always been against vicarious punishments and are unwilling to read in an enactment that mens rea is not necessary for constituting an offence. But as pointed out by R.L.A. after considering the said decisions, that although under such provision as Section 9 of the Essential Supplies (Temporary Powers) Act there is no legal

objection to prosecuting a Director of a Limited Company, there must be on the merits evidence sufficient for the purpose. In the absence of such prima facie evidence it would be wrong to rely solely on the legal presumption which is available under such provisions as section 9.

4. In this case in regard to the Bombay Trading Company, such evidence is absent against Lachmandas. According to him the parcels were not ready for despatch. According to the general practice no parcel can be redy for despatch, unless its contents are described on their out-coverings or in a memo accompanying the same. The parcels in question did not fulfil this requirement. In the case of the ~~xxxxxxxx~~ proprietors of the International Carriers, Limited, the only persons who were responsible for giving wrong description in the consignment note were Bramhapal and Bhasker. It is not alleged that the proprietors were privies.

5. For the above reasons it will neither be fair nor proper to institute prosecution against Lachmandas of the Bombay Trading Company or the proprietors of the International Carriers Limited.

Sd/- J.R.Dhurandhar,
Additional Secretary to Government.

U.R. to the P.T.C. No.G/418, dated 1.6.49.

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Office of the R.L.A.

The view taken by the District Government Pleader that fresh delegation is necessary in respect of the Indian States is correct. The Central Govnrnment has since issued a delegation notification empowering the District Magistrates in respect of the additional territory and the question is therefore now of academic interest only.

Sd/- P.N.Lad,
Remembrancer of Legal Affairs.

U.O.R. to C.S.D. No.G/548 dated the 6th August 1949.

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Legal Department.

The orders contained in the two lists forwarded by the Civil Supplies Department can be classified as follows:-

1) Orders relating to foodstuffs made either under Essential Sipplies (Temporary Powers) Act, 1946 or continued under Essential Supplies (Temporary Powers) Act, 1946.

2) Orders relating to essential commodities other than foodstuffs and cotton textiles made under Essential Supplies (Temporary Powers) Act, 1946 or continued under the Essential Supplies (Temporary Powers) Act, 1946.

3) Orders relating to essential commodities such as milk made under Bombay Essential Commodities and Cattle (Control) Act, 1946 or continued under Bombay Essential Commodities and Cattle (Control) Act, 1946.

Sub-section 4 of section 7 of the Essential Supplies (Temporary Powers) Act provides that if any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to 3 years or with fine or with both and if the order so provides any Court tryping such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty. Sub section (2) of section 2 of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act, 1947, provides that notwithstanding anything contained in the Essential Supplies (T.P.) Act or the Bombay Essential Commodities and Cattle (Control) Act any Court trying a contravention of an order made under sections 3 or 4 of the said Acts respectively may direct that any property in respect of which the Court is satisfied

that the order has been contravened shall be forfeited to the Provincial Government.* In R.L.A.'s opinion dated 3.5.49 was held that in cases relating to foodstuffs and cotton textiles the provisions of the Enhancement of Penalties Act, 1947 stand abrogated in view of the amendment of the Essential Supplies (Temporary Powers) Act, 1946 by Government of India Acts LXIV of 1948 and XIX of 1949. (Please see the Civil Supplies Department Circular* in this behalf No. 410/II dated 29.9.49 issued to all D.G.Ps and P. Ps.) The position as regards the orders relating to foodstuffs made or continued under Essential Supplies (Temporary Powers) Act, 1946 is that in view of the provisions of section 7 (b)(ii) of the said Act, it is not necessary to provide in the order itself for a clause providing for the forfeiture of the property in respect of which the order is contravened. However, in view of the provisions of section 7-A of the Essential Supplies (Temporary Powers) Act, a clause will have to be inserted in every order relating to foodstuffs directing that the packages, coverings and receptacles in which such property is found and the animals, vehicles or other conveyances used in carrying such property may be forfeited to His Majesty.

*copy attached

In respect of orders made or continued under the Essential Supplies (Temporary Powers) Act relating to essential commodities other than foodstuffs or cotton textiles, the provisions of the Enhancement of Penalties Act would apply, and it would not be necessary to include a clause empowering forfeiture of property in such orders. There is no provision regarding forfeiture of receptacles or vehicles carrying them in respect of such commodities in the Essential Supplies (Temporary Powers) Act, as section 7-A relates only to orders relating to foodstuffs and cotton textiles.

As regards the orders made or continued under Bombay Essential Commoditites and Cattle (Control)

Act, in view of section 10(2) thereof and the provisions of section 2(2) of the Enhancement of Penalties Act no express provision in the orders for the forfeiture of the property involved in the offence and of any vehicle, vessel or animal used for carrying such property would be necessary.

Now that a specific provision has been made in section 7-A of the Essential Supplies (Temporary Powers) Act, 1946 for the forfeiture of packages etc. it would be desirable to base the forfeiture clause on the lines of that section. The following formula is suggested to the Civil Supplies Department and that Department is advised that this should not be used in every case, but only in suitable cases:-

"Whenever any offence relating to *---------- ----------which is punishable under sub-section (1) of section 7 of the Essential Supplies (Temporary Powers) Act, 1946 has been committed, the Court trying such offence may, without prejudice to any other punishment to which the person committing the offence may be liable, direct that the packages, coverings or receptacles in which any stock of ---------- liable to be forfeited under the said sub-section is found, and the animals, vehicles, vessels or other conveyances used in carrying the said stock of ----------shall be forfeited to His Majesty. "

Sd/- J.R.Dhurandhar,
Additional Secretary to Government.

U.R. to C.S.D. No.G-662½ dated the 18th November 1949.

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